

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ILIOULAOKALANI COALITION, et al.,
Plaintiffs,

v.

DONALD H. RUMSFELD, et al.,
Defendants

Civil No. 05-0015915

DECLARATION OF LAWRENCE T.
KAWASAKI

I, Lawrence T. Kawasaki, hereby declare that:

1. I am a Program Manager with the U.S. Army Corps of Engineers (USACE), Honolulu Engineer District, Hawaii. I have a Bachelor of Science degree in engineering and have over 23 years of experience in facilities design and construction. My last four years has been with the Honolulu Engineer District (HED).
2. HED is the Design and Construction Agent for Army and Air Force military construction (MILCON) projects in Hawaii. As the SBCT Program Manager at HED, I am responsible for the coordination and execution of all HED projects associated with the transformation of the 2nd Brigade, 25th Infantry Division (Light), US Army Hawaii, to a Stryker Brigade Combat Team (SBCT).
3. As detailed herein, the Army invested over \$63,100,000 in SBCT MILCON construction projects to date. If construction of ongoing work is suspended for as little as a month or two, impact costs are estimated to exceed \$675,000 per month. If construction is suspended for 18 months, impact costs are estimated to exceed

\$22,700,000. If projects are terminated and have to be re-advertised and awarded 18 months later, impact costs are estimated to exceed \$49,100,000. Long term suspensions or terminations will prevent the HED from completing these Congressionally authorized and appropriated MILCON projects within mandated thresholds. The \$46,200,000 the Army invested in land acquisitions to date will not be very useful unless the Army is allowed to construct and/or train on them. Suspending or terminating SBCT construction projects will have an adverse impact on Hawaii's contractors, subcontractors, suppliers and workers.

4. The Army has taken extensive measures throughout the life of all SBCT MILCON projects to avoid impacts to potential natural and cultural resources. The locations of all sensitive species habitats that could be impacted by construction are shown on the construction drawings. Best management practices, based on the Biological Opinions (issued by the U.S. Fish and Wildlife Service), are identified in the designs and enforced during construction to protect natural resources. All culturally sensitive sites, regardless of whether they are eligible for listing on the National Register of Historic Properties, are identified and avoided in the design commencing with the initial planning and design charrette through the final stages of the design process. The Army provided for extensive cultural monitoring of its unexploded ordnance removal work at the Combined Arms Collective Training Facility, Kahuku (Project #57305). During that removal effort, cultural monitors found several potential archeological sites. Although the design was completed, the Army pulled the project back and re-designed the project to avoid all of the sites, even if SHPO agreed that most were not eligible for listing. The Battle Area Live Fire Complex, SB (Project #58144) was re-designed several times to avoid potential

cultural sites, even though determinations on eligibility for listing were not made. The Army realigned roads, deleted a portion of a road, relocated targets and even modified targets to avoid cultural sites. Extensive efforts were also expended to conduct a beaten zone analysis for a newly discovered cultural site. This analysis plotted the normal paths of munitions fired toward certain targets on the range. The Army analyzed the possible impacts to the site and proposed the placement of two dirt berms to protect it. After assessing the function and effectiveness of the proposed berms, in consultation with the SHPO and the cultural monitors, the Army included the berms in the construction contract. The Army also included clauses in all construction contracts to ensure inadvertently discovered cultural sites are protected during construction. A potential burial site was inadvertently discovered in the firing path of one of the 1500 meter targets at the Qualification Training Range 1 (QTR1), SB project. The Army stopped work on the target, did not disturb the proposed burial site, searched for other potential target locations, coordinated with archeologists and cultural monitors, and constructed the target in a new location that was no longer in the firing path of the potential burial site. These are a few examples of the extensive efforts and additional expenditures incurred by the Army to avoid and/or protect potential cultural resources during design and construction of SBCT MILCON projects. As noted above, the Army treats all potential sites as sensitive cultural properties.

5. The status of SBCT MILCON projects are provided below. The following projects have been constructed and are currently being used:

a. Tactical Vehicle Wash Facility, East Range (Project #57416) PA \$3.5M

Completion date: July 12, 2006

b. Qualification Training Range 1 (QTR1), Schofield (Project #57461) PA \$8.7M

Completion date: October 13, 2006

6. The projects discussed in this section are currently in construction. The costs provided for the projects are rough estimates based on the best available information and consultation with HED cost engineers, resident engineers, project engineers, and quality assurance representatives. The estimated percent complete is based on the latest invoiced amounts to date. Since invoicing normally follows after work is placed, construction completion percentages may be slightly higher than shown below. Estimated amounts expended and not expended are determined by multiplying the Programmed Amount (PA) by the estimated percent complete. Estimated additional cost to suspend work for an initial two month (60 day) period is based upon extended overhead costs and equipment rental costs for each month construction is delayed. This estimate assumes the contractor will not re-assign his staff and his equipment for these short delays. Estimated additional costs to suspend work 18 months assumes that the contractor will be able to re-assign his staff and re-allocate his equipment to different project sites at some point after the Government suspends work for 18 months. This estimate also includes impact costs such as demobilization/re-mobilization, securing the jobsite, settlement costs, continued trailer rental costs, utility disconnections and reconnections, and nominal increases in construction costs. Estimated additional costs to terminate the work and re-procure within 18 months assumes the Government will terminate all contracts with the contractors and will re-procure these services 18 months later. Termination costs compensate the contractor for all costs incurred, including the costs of terminating subcontracts and supply contracts, re-stocking fees, transportation,

demobilization, securing the jobsite, utility disconnections, etc. Re-procurement of the contract 18 months after termination includes costs such as re-designs to bring the projects up to standard and to identify the remaining work, solicitation and award of a new construction contract, mobilization costs, nominal increases in construction , additional increases in construction if the project was awarded before or during Hurricanes Katrina & Rita (construction prices in Hawaii really escalated after those hurricanes), and escalation from taking over another contractor's work, since there is no assurance the same contractor will bid for, be awarded, or be in a position to complete the work. It is important to note that the estimated suspension and termination costs identified below do not include the cost to complete construction when the project is resumed. The following projects are currently being constructed:

a. Qualifications Training Range 2, SB (Project #57462) PA \$4.95M.

Construction Award: August 19, 2005

Construction Completion Date: November 20, 2006

Estimated percent complete: (70%)

Estimated amount expended to date: \$3,465,000

Remaining not expended to date: \$1,465,000

Estimated additional cost to suspend work 1-2 months: \$50,000 / month

Estimated additional cost to suspend work 18 months: \$414,000

Estimated additional cost to terminate and re-procure in 18 months: \$1,566,000

b. Multiple Deployment Facility, WAAF (Project #57422) PA \$24M.

Construction Award: September 26, 2005

Construction Completion Date: July 27, 2007

Estimated percent complete (56%)

Estimated amount expended to date: \$13,440,000

Remaining not expended to date: \$10,656,000

Estimated additional cost to suspend work 1-2 months: \$130,000 / month

Estimated additional cost to suspend work 18 months: \$2,277,000

Estimated additional cost to terminate and re-procure in 18 months: \$10,871,000

c. Vehicle Maintenance Facility Incr 1, SB (Project #57421) PA \$49M.

Construction Award: June 21, 2005

Construction Completion Date: September 15, 2007

Estimated percent complete (49%)

Estimated amount expended to date: \$24,010,000

Remaining not expended to date: \$24,990,000

Estimated additional cost to suspend work 1-2 months: \$205,000 / month

Estimated additional cost to suspend work 18 months: \$4,444,000

Estimated additional cost to terminate and re-procure in 18 months: \$25,198,000

d. Urban Assault Course, SB (Project #58143) PA \$5.841M.

Construction Award: February, 6, 2006

Construction Completion Date: March 27, 2007

Estimated percent complete (45%)

Estimated amount expended to date: \$2,628,500

Remaining not expended to date: \$3,212,500

Estimated additional cost to suspend work 1-2 months: \$55,000 / month

Estimated additional cost to suspend work 18 months: \$907,000

Estimated additional cost to terminate and re-procure in 18 months: \$3,478,000

e. Vehicle Maintenance Facility Incr 2, SB (Project #57421) PA \$25M.

Construction Award: June 21, 2005/September 28, 2006

Construction Completion Date: September 15, 2007/April 30, 2008

Estimated percent complete (25%)

Estimated amount expended to date: \$6,250,000

Remaining not expended to date: \$18,750,000

Estimated additional cost to suspend work 1-2 months: \$60,000 / month

Estimated additional cost to suspend work 18 months: \$2,377,000

Estimated additional cost to terminate and re-procure in 18 months: \$1,774,000

f. Battle Area Live Fire Complex, SB (Project #58144) PA \$32M.

Construction Award: June 30, 2006

Construction Completion Date: March 29, 2008

Estimated percent complete (3.5%)

Estimated amount expended to date: \$1,120,000

Remaining not expended to date: \$30,880,000

Estimated additional cost to suspend work 1-2 months: \$115,000 / month

Estimated additional cost to suspend work 18 months: \$4,051,000

Estimated additional cost to terminate and re-procure in 18 months: \$5,141,000

g. Vehicle Trail -- Schofield Barracks to Heleman, SB (Project #57406) PA \$7.3M.

Construction Award: September 29, 2006

Construction Completion Date: October 31, 2008

Estimated percent complete (0%)

Estimated amount expended to date: \$0

Remaining not expended to date: \$7,300,000

Estimated additional cost to suspend work 1-2 months: \$60,000 / month

Estimated additional cost to suspend work 18 months: \$1,056,000

Estimated additional cost to terminate and re-procure in 18 months: \$1,111,000

7. The following projects are in the solicitation phase (not awarded yet):

a. Battle Area Live Fire Complex, PTA (Project #57197) PA \$33.66M,

Estimated Contract Award: December 29, 2006

Estimated additional cost to delay award 18 months: \$3,020,000

b. Tactical Vehicle Wash Facility, PTA (Project #57414) PA \$9.207M,

Estimated Contract Award: December 29, 2006

Estimated additional cost to delay award 18 months: \$1,028,600

c. Combined Arms Collective Training Facility, KTA (Project #57305) PA \$32.542M,

Estimated Contract Award: March 9, 2007

Estimated additional cost to delay award 18 months: \$3,128,780

8. The following projects are SBCT Milcon acquisitions:

a. South Range Land Acquisition, SB (Project #55270) PA \$19.4M

Declaration of Taking issued on September 22, 2004.

Acquisition cost: \$15,900,000

b. West PTA Land Acquisition, PTA (Project #57411) PA \$30M

Title signed on June 9, 2006.

Acquisition cost: \$30,000,000

c. Schofield Barracks to Heleman Trail Easement, SB (Project #57802) PA \$1.4M.

Estimated Acquisition cost: \$300,000

Offer to sell signed with Dole on July 27, 2006.

Offer to sell signed with Galbraith Estates on May 18, 2006. Anticipate filing of Declaration of Taking documents by October 31, 2006.

Obtained a State of Hawaii Right of Way on January 31, 2006.

Anticipate obtaining City and County of Honolulu easement by December 31, 2006.

9. The following project is currently in the design phase:

a. Tactical Vehicle Wash Facility, KTA (Project #57415) PA \$9.2M

Estimated design completion: September 30, 2007

Estimated contract award: March 31, 2008.

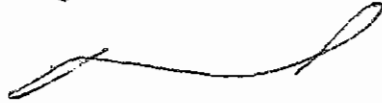
10. All other SBCT Milcon projects are currently programmed in FY11 or later.

11. Construction contractors with SBCT MILCON project awards diligently prepared and submitted proposals based on the assumption that they wouldn't be delayed or prevented from completing construction. These awards likely influenced how aggressively they priced and/or pursued other work. They also scheduled this work with other ongoing work to maximize their efficiency. They committed bid and performance bonds for these projects which prevented them from using that capacity on other projects. While the Government will compensate the construction contractors for overhead costs incurred during suspension of work, the Government will not compensate the contractors for profit, which is the reason they are in business. These delays will cause ripple affects in the construction industry, adversely impacting subcontractors and suppliers. Construction workers will have to find other projects to work on during the suspended

period. Some may not find work immediately while others may not receive the same wages (Davis Bacon Wages) they are receiving on SBCT MILCON projects.

12. In summary, the Army has taken extensive measures to avoid impacts to natural and cultural resources on SBCT MILCON projects. Any delays to these projects, through suspension, termination, or prevention from usage will have adverse impacts to the Army, the construction industry, and the island economy in Hawaii.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



LAWRENCE T. KAWASAKI

22 OCT 06

Date